

# NOMINATION OF JAMES S. HALPERN

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## HEARING

BEFORE THE

## COMMITTEE ON FINANCE UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON THE

NOMINATION OF

JAMES S. HALPERN, TO BE A JUDGE OF THE U.S. TAX COURT

\_\_\_\_\_  
JUNE 5, 1990  
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EDMUND J. MIHALSKI, *Minority Chief of Staff*

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## NOMINATION OF JAMES S. HALPERN, TO BE A JUDGE OF THE U.S. TAX COURT

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TUESDAY, JUNE 5, 1990

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 4:07 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen, (chairman of the committee), presiding.

Also present: Senators Moynihan, Bradley, Riegle, Rockefeller, Daschle, Breaux, Packwood, Danforth, and Symms.

### OPENING STATEMENT OF LLOYD BENTSEN, CHAIRMAN, SENATE FINANCE COMMITTEE

The CHAIRMAN. This hearing will come to order.

Judge Halpern, would you come to the table, please? And Senator Moynihan and Senator Daschle. All right.

Mr. James Halpern has been nominated to be a judge on the U.S. Tax Court, Mr. Halpern, as a tax judge, your task would be to decide how the tax laws apply to individual circumstances when the Government and the taxpayer disagree. As the tax laws become more complex, the difficulty of that task increases.

I am interested in your multifaceted exposure to the tax laws. You have taught tax law. You have been in private practice and you have served with the Government. That should make you imminently qualified for the job that you are about to take. With your well-rounded experience, I am delighted to see you on the Tax Court. We are looking forward to having you exercise your new responsibilities.

But before calling on you, I would like to recognize the distinguished senior Senator from the State of New York, Senator Moynihan, for any comments that he would like to make.

### OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Thank you, Mr. Chairman. I am here as a New Yorker to introduce Mr. Halpern to the committee, and if I may, Ms. Nancy Nord, his wife, and his daughter, Hilary, who are here for the occasion, and to say, sir, that it is the distinction of Mr. Halpern that he has not just practiced but he has taught tax law at NYU, a distinguished law school which has produced certainly one of the most distinguished members of this panel, the once and future chairman himself, Senator Packwood. He has also

taught at the law school at St. Johns University. And to say also, Mr. Chairman, that the tax section of the New York State Bar Association, has taken considerable effort to inquire into this matter, and Mr. Arthur Feder, who is chair, has written on behalf of the tax section a strongest possible letter of endorsement of Mr. Halpern, and I would ask that this be put in the record at this time.

The CHAIRMAN. Without objection, that will be done.

[The letter appears in the appendix.]

Senator MOYNIHAN. And thank you for the privilege of introducing Mr. Halpern.

Mr. HALPERN. Thank you, Senator.

The CHAIRMAN. I would like to defer now to the ranking member of the minority for such comments as he would like to make.

#### OPENING STATEMENT OF HON. BOB PACKWOOD, A U.S. SENATOR FROM OREGON

Senator PACKWOOD. Mr. Chairman, as the nominee knows—I do not know him well. I know his resume well; I know his NYU background which is mine—but to me, most important is the fact that Oregon's best tax lawyer, or certainly one of the half a dozen best, Gersham Goldstein, thinks very, very highly of you; has written to me, has called me and has said you would be an exemplary member of the Court. He holds you in the highest regard, and from Gersham that is very high praise, and so I am delighted to support you.

Mr. HALPERN. Thank you, Senator.

The CHAIRMAN. I would like to call now on Senator Daschle for any comments he would like to make.

#### OPENING STATEMENT OF HON. THOMAS DASCHLE, A U.S. SENATOR FROM SOUTH DAKOTA

Senator DASCHLE. Mr. Chairman, I too would like to indicate my strong support for this nomination. Mr. Halpern has been the principal technical advisor to the Associate Chief Counsel (Technical) of the IRS. He has been well published over the last 12 years in tax law. He comes very well qualified for this position, so I am quite enthusiastic. I must say his most distinguishing asset is the fact that his wife, Nancy Nord, is a South Dakotan, and with that he has great opportunity for advice in this new position and I am sure he will serve us real well.

The CHAIRMAN. Thank you.

Are there further comments?

[No response.]

The CHAIRMAN. Mr. Halpern, the Federal Courts Study Commission, established by the Congress to review the Federal judicial system, had recommended the establishment of an appellate division of the Tax Court which would have exclusive jurisdiction over all tax appeals. Do you have an opinion on that?

#### STATEMENT OF JAMES S. HALPERN, TO BE A JUDGE OF THE U.S. TAX COURT

Mr. HALPERN. Senator, from my perspective as a practitioner and as a member of the New York State Bar Tax Section Executive

Committee, which has submitted a report on that, I think that at this point I would agree with the Bar's recommendation that the system we now have works. Perhaps, if I am confirmed by the Senate and get on the other side, I might have further views on it, but at this time I am pretty much in agreement with the system as it now exists.

The CHAIRMAN. We have over 50,000 cases pending before the Tax Court. They have made some significant progress in reducing that inventory. With your experience in private practice, do you have any thoughts concerning what can be done and how it can be accomplished?

Mr. HALPERN. Senator, I think that the court, working with the office of chief counsel and with private practitioners, may be able to come up with alternative dispute resolution systems that may aid in reducing the docket. I know that has been a consideration of the Treasury and it would be something that I would enjoy looking into if confirmed.

The CHAIRMAN. The tax court was in part established to bring consistency and coherence to tax case law. Do you think the court has been successful?

Mr. HALPERN. Yes, sir, I do. And I think that a token of that is the unanimous support of the Bar to keep the Tax Court as a trial level court, as the preeminent court litigating tax disputes. I think it is because of the confidence that the private Bar and, I assume, the office of chief counsel has in the Tax Court and the uniformity that it has developed that there is no support to change its role. I think its successes is a token of its ability to come up with uniform positions.

The CHAIRMAN. Senator Packwood,

Senator PACKWOOD. No questions, Mr. Chairman.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. No questions.

The CHAIRMAN. Senator Riegle.

Senator RIEGLE. No questions.

The CHAIRMAN. Senator Rockefeller.

Senator ROCKEFELLER. No questions.

The CHAIRMAN. Senator Daschle.

Senator DASCHLE. No questions.

The CHAIRMAN. Senator Breaux.

Senator BREAU. No questions.

The CHAIRMAN. Mr. Halpern, I think we ought to quit while we are ahead. [Laughter.]

Mr. HALPERN. Thank you, sir.

The CHAIRMAN. Thank you very much.

Mr. HALPERN. May I just add that one member of my family, my son, William Dyer Halpern, was unable to be here with us today because he is on a class trip to the Military Academy at West Point, and I would just like to put his name in the record as being present in spirit if not in body.

The CHAIRMAN. Without objection that will be done.

Senator Roth, do you have any comments?

Senator ROTH. No comments.

The CHAIRMAN. Thank you very much, Mr. Halpern.

Mr. HALPERN. Thank you, sir.

[Whereupon, at 4:14 p.m., the hearing was concluded.]

## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED

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#### RESUME

JAMES S. HALPERN

Residence: 65 Observatory Circle, Wash- Telephone:  
ington, D.C. 20008.

Home: (202) 337-0388

Office: (202) 861-1539

#### EMPLOYMENT

Current ..... Partner, Baker & Hostetler, 1050 Connecticut Avenue, N.W.,  
Washington, D.C. 20036

1980-1983 ..... Principal Technical Advisor to the Associate Chief Counsel (Tech-  
nical), Internal Revenue Service, 1111 Constitution Avenue,  
N.W., Washington, D.C. 20224

1979-1980 ..... Roberts & Holland, 30 Rockefeller Plaza, New York, New York,  
10020. Associate Attorney—Tax.

1978-1979 ..... Law School, New York University, 40 Washington Square South,  
New York, New York 10012. Visiting Professor teaching gradu-  
ate and undergraduate courses in Federal tax law. (Adjunct  
Professor, 1977-1978, 1979-1980.)

1976-1978 ..... Law School, St. John's University, Jamaica, New York 11439.  
Assistant Professor teaching courses in Federal tax law.

1975-1976 ..... Law School, Washington and Lee University, Lexington, Virginia  
24450. Assistant Professor teaching courses in Federal tax law.

1972-1974 ..... Mudge Rose Guthrie & Alexander, 20 Broad Street, New York,  
New York 10005. Associate Attorney—Tax Department.

#### EDUCATION

Law School ..... New York University, New York, New York.  
Degree: LL.M. (in Taxation) (June 1975)

Law School ..... University of Pennsylvania, Philadelphia, Pa.  
Degree: J.D. (May 1972)

Wharton  
School. University of Pennsylvania, Philadelphia, Pa.  
Degree: B.S. Cum Laude (May 1967)  
Major: Economics

**BARS**

Admitted in New York, the District of Columbia, and to various Federal courts.

**ASSOCIATIONS**

Tax Section, American Bar Association. Past chair, Committee on Government Submissions.

Tax Section, New York State Bar Association. Member, Executive Committee.

**PERSONAL DATA**

Date of Birth: October 16, 1945

Place of Birth: New York, New York

Height: 6'1"

Weight: 185 lbs.

Marital Status: Married (Nancy A. Nord) two children (W. Dyer Halpern (Age: 9) and Hilary A. Halpern (Age: 3))

**MILITARY SERVICE**

Colonel, United States Army Reserve (Active reserve).

**POLITICAL ORGANIZATIONS**

Republican National Lawyers Association

Lawyers for Bush/Quayle

**PUBLICATIONS**

| <i>Article</i>                                                                                                         | <i>Publication</i>                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| The Passive Activity Loss Limitation Rules: Where Are We Now? Part I.                                                  | The Review of Taxation of Individuals (12 RTI 187) (1988)                                                                         |
| The Passive Activity Loss Limitation Rules: Where Are We Now? Part II.                                                 | The Review of Taxation of Individuals (12 RTI 291) (1988)                                                                         |
| A Checklist for Planning a Liquidation Under Section 337 of the Internal Revenue Code.                                 | The Practical Lawyer (June 1985)                                                                                                  |
| Recent Cases and Rulings—Collapsible Corporations: Recent Ruling May Add New Limitation to Application of Section 341. | The Journal of Real Estate Taxation (8 JRT 86) (1981)                                                                             |
| Liabilities and Cost Basis: Some Fundamental Considerations.                                                           | The Journal of Real Estate Taxation (7 JRT 334) (1980)                                                                            |
| Current Tax Developments—Proposed Regulations Address Amount Realized on Sale or Disposition of Encumbered Property.   | The Journal of Real Estate Taxation (7 JRT 292) (1980)                                                                            |
| Recent Cases and Rulings—The Saga of "Bulldog" McShain: Taxpayer Succeeds on Third Visit Tax Court.                    | The Journal of Real Estate Taxation (7 JRT 176) (1980)                                                                            |
| Statement of James Halpern, New York University Law School.                                                            | Hearing before the Subcommittee on Taxation and Debt Management of the Committee on Finance, United States Senate (June 22, 1979) |
| Current Tax Developments Simplification at Last: Congress Acts to Ease Installment Sale Requirements.                  | The Journal of Real Estate Taxation (7 JRT 86) (1979)                                                                             |
| Recent Cases and Rulings Partnership Swapping—"From Miller to Meyer to Gulfstream": A Saturday Movie Serial.           | The Journal of Real Estate Taxation (6 JRT 359) (1979)                                                                            |

- Footnote 37 and the *Crane* Case: The Problem That Never Really Was. *The Journal of Real Estate Taxation* (6 JRT 197) (1979)
- Recent Cases and Rulings—Installment Sales and Mortgages: Tax Court Holds That Discharge at Time of Sale is "Payment" to Seller. *The Journal of Real Estate Taxation* (6 JRT 83) (1978)
- Recent Cases and Rulings—Service Rules Qualification Does Not Depend on a Cooperative Housing Corporation Owning 100 Percent of Condominium Apartments in a Building. *The Journal of Real Estate Taxation* (5 JRT 355) (1978)
- Recent Cases and Rulings—Sale-Leasebacks in the Spotlight Again: Third Circuit Strikes Down Taxpayer's Characterization. *The Journal of Real Estate Taxation* (5 JRT 269) (1978)
- Recent Cases and Rulings—Section 341—Does Leasing Property Amount to Construction?. *The Journal of Real Estate Taxation* (5 JRT 173) (1978)
- Real Estate Investment Trusts and the Tax Reform Act of 1976. *The Tax Lawyer* (31 TL 329) (1978)
- Courts Grant Protection to Buyers of New Houses. *Wharton Quarterly* (Fall 1970)
- A. Speeches:  
None.
- B. Qualifications:  
For nearly twenty years, I have pursued a career, as both a lawyer and educator, in the Federal tax field. I have represented private clients and have served for three years, as Principal Technical Advisor, in the Internal Revenue Service. I believe that my experience and perspective well qualify me to serve as a judge of the Tax Court.

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NEW YORK STATE BAR ASSOCIATION (TAX SECTION),  
*New York, NY, May 18, 1990.*

HON. DANIEL PATRICK MOYNIHAN,  
SR-464,  
*Russell Senate Office Building,*  
*Washington, DC.*

Re: Nomination of James S. Halpern to the United States Tax Court

Dear Senator Moynihan: I understand that the President has nominated James S. Halpern to serve as a judge of the United States Tax Court. I write to convey the strong support of the Tax Section of the New York State Bar Association for this nomination and urge that you give the nomination your strongest support.

Mr. Halpern was born in New York, practiced law in New York and taught at New York University and St. John's University law schools before moving to Washington in 1980 to become Principal Technical Advisor to the Associate Chief Counsel (Technical) of the Internal Revenue Service. He holds the LL.M. degree from NYU and law and economics degrees from the University of Pennsylvania.

As you know, the maintenance of a high level of technical expertise among the judges of the Tax Court is a vital ingredient in the proper functioning of our tax system. This will become particularly important as the Court is faced with the task of interpreting the vast body of highly complex tax legislation that has been enacted in the past few years. Jim Halpern will be an outstanding addition to a Court faced with these tasks.

Mr. Halpern has been a member of the Executive Committee of the Tax Section since he left government service in 1983 and has been active in its work. He has also been the Chair of the Committee on Government Submissions of the Tax Section of the American Bar Association. This is one of the most important committees

of the ABA Tax Section since it is responsible for screening all government submissions prepared by other committees of the Section.

I speak for myself and the Executive Committee in urging that you lend the strongest possible support to Mr. Halpern's nomination to the Tax Court.

If you feel it necessary or appropriate, I or one of the other officers of the Tax Section would be glad to testify in support of Mr. Halpern's nomination.

Yours very truly,

ARTHUR A. FEDER, *Chair.*

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